



PRELIMINARY DRAFT

No. 3201

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2012 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 11-13-1-8; IC 35-38-2-3.

Synopsis: Probation sanctions. Requires the judicial conference to adopt rules concerning swift and certain sanctions that a probation officer may use in supervising persons on probation. Provides procedures for a person on probation to be sanctioned by a probation officer.

Effective: July 1, 2012.



A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 11-13-1-8, AS AMENDED BY P.L.1-2007, SECTION 102, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. (a) As used in this section, "board" refers to the board of directors of the judicial conference of Indiana established by IC 33-38-9-3.

(b) The board shall adopt rules consistent with this chapter, prescribing minimum standards concerning:

(1) educational and occupational qualifications for employment as a probation officer;

(2) compensation of probation officers;

(3) protection of probation records and disclosure of information contained in those records; ~~and~~

(4) presentence investigation reports;

(5) a schedule of progressive probation incentives and violation sanctions, including judicial review procedures; and

(6) qualifications for probation officers to administer probation violation sanctions under IC 35-38-2-3(e).

(c) The conference shall prepare a written examination to be used in establishing lists of persons eligible for appointment as probation officers. The conference shall prescribe the qualifications for entrance to the examination and establish a minimum passing score and rules for the administration of the examination after obtaining recommendations on these matters from the probation standards and practices advisory committee. The examination must be offered at least once every other month.

(d) The conference shall, by its rules, establish an effective date for the minimum standards and written examination for probation officers.

(e) The conference shall provide probation departments with training and technical assistance for:

(1) the implementation and management of probation case classification; and



(2) the development and use of workload information.
 The staff of the Indiana judicial center may include a probation case management coordinator and probation case management assistant.

(f) The conference shall, in cooperation with the department of child services and the department of education, provide probation departments with training and technical assistance relating to special education services and programs that may be available for delinquent children or children in need of services. The subjects addressed by the training and technical assistance must include the following:

- (1) Eligibility standards.
- (2) Testing requirements and procedures.
- (3) Procedures and requirements for placement in programs provided by school corporations or special education cooperatives under IC 20-35-5.
- (4) Procedures and requirements for placement in residential special education institutions or facilities under IC 20-35-6-2 and 511 IAC 7-27-12.
- (5) Development and implementation of individual education programs for eligible children in:
 - (A) accordance with applicable requirements of state and federal laws and rules; and
 - (B) coordination with:
 - (i) individual case plans; and
 - (ii) informal adjustment programs or dispositional decrees entered by courts having juvenile jurisdiction under IC 31-34 and IC 31-37.
- (6) Sources of federal, state, and local funding that is or may be available to support special education programs for children for whom proceedings have been initiated under IC 31-34 and IC 31-37.

Training for probation departments may be provided jointly with training provided to child welfare caseworkers relating to the same subject matter.

(g) The conference shall, in cooperation with the division of mental health and addiction (IC 12-21) and the division of disability and rehabilitative services (IC 12-9-1), provide probation departments with training and technical assistance concerning mental illness, addictive disorders, mental retardation, and developmental disabilities.

(h) The conference shall make recommendations to courts and probation departments concerning:

- (1) selection, training, distribution, and removal of probation officers;
- (2) methods and procedure for the administration of probation, including investigation, supervision, workloads, record keeping, and reporting; and
- (3) use of citizen volunteers and public and private agencies.



(i) The conference may delegate any of the functions described in this section to the advisory committee or the Indiana judicial center.

SECTION 2. IC 35-38-2-3, AS AMENDED BY P.L.106-2010, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) The court may revoke a person's probation if:

(1) the person has violated a condition of probation during the probationary period; and

(2) the petition to revoke probation is filed during the probationary period or before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(b) When a petition is filed charging a violation of a condition of probation, the court may:

(1) order a summons to be issued to the person to appear; or

(2) order a warrant for the person's arrest if there is a risk of the person's fleeing the jurisdiction or causing harm to others.

(c) The issuance of a summons or warrant tolls the period of probation until the final determination of the charge.

(d) **Except as provided in subsection (e), the court shall conduct a hearing concerning the alleged violation. The court may admit the person to bail pending the hearing. A person who is not admitted to bail pending the hearing may not be held in jail for more than fifteen (15) days without a hearing on the alleged violation of probation.**

(e) A person may admit to a violation of probation and waive the right to a probation violation hearing after being offered the opportunity to consult with an attorney. If the person admits to a violation and requests to waive the probation violation hearing, the probation officer shall advise the person that by waiving the right to a probation violation hearing the person forfeits the rights provided in subsection (f). The sanction administered shall follow the schedule of progressive probation violation sanctions adopted by the judicial conference of Indiana under IC 11-13-1-8.

~~(e)~~ **(f)** Except as provided in subsection (e), the state must prove the violation by a preponderance of the evidence. The evidence shall be presented in open court. The person is entitled to confrontation, cross-examination, and representation by counsel.

~~(f)~~ **(g)** Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.

~~(g)~~ **(h)** If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may impose one (1) or



more of the following sanctions:

(1) Continue the person on probation, with or without modifying or enlarging the conditions.

(2) Extend the person's probationary period for not more than one (1) year beyond the original probationary period.

(3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

~~(h)~~ **(i)** If the court finds that the person has violated a condition of home detention at any time before termination of the period, and the petition to revoke probation is filed within the probationary period, the court shall:

(1) order one (1) or more sanctions as set forth in subsection ~~(g)~~; **(h)**; and

(2) provide credit for time served as set forth under IC 35-38-2.5-5.

~~(i)~~ **(j)** If the court finds that the person has violated a condition during any time before the termination of the period, and the petition is filed under subsection (a) after the probationary period has expired, the court may:

(1) reinstate the person's probationary period, with or without enlarging the conditions, if the sum of the length of the original probationary period and the reinstated probationary period does not exceed the length of the maximum sentence allowable for the offense that is the basis of the probation; or

(2) order execution of all or part of the sentence that was suspended at the time of the initial sentencing.

~~(j)~~ **(k)** If the court finds that the person has violated a condition of home detention during any time before termination of the period, and the petition is filed under subsection (a) after the probation period has expired, the court shall:

(1) order a sanction as set forth in subsection ~~(i)~~; **(j)**; and

(2) provide credit for time served as set forth under IC 35-38-2.5-5.

~~(k)~~ **(l)** A judgment revoking probation is a final appealable order.

~~(l)~~ **(m)** Failure to pay fines or costs (including fees) required as a condition of probation may not be the sole basis for commitment to the department of correction.

~~(m)~~ **(n)** Failure to pay fees or costs assessed against a person under IC 33-40-3-6, IC 33-37-2-3(e), or IC 35-33-7-6 is not grounds for revocation of probation.

